

1 THE HONORABLE THOMAS S. ZILLY
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 RONDEVOO TECHNOLOGIES, LLC,

No. 2:18-CV-01625-TSZ

10 Plaintiff,

11 v.
12 HTC AMERICA, INC.'S ANSWER,
13 DEFENSES, AND COUNTERCLAIMS TO
14 RONDEVOO TECHNOLOGIES, LLC'S
15 COMPLAINT FOR PATENT
16 INFRINGEMENT

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HTC AMERICA, INC.,
Defendant.

Defendant HTC America, Inc. ("Defendant," or "HTCA") by and through its undersigned counsel, hereby responds to Rondevo Technologies, LLC's ("Plaintiff" or "Rondevo") Complaint for Patent Infringement ("Complaint") of U.S. Patent No. 6,377,685 (the "'685 patent" or the "asserted patent"). Except as expressly admitted herein, HTCA denies all allegations of the Complaint.

THE PARTIES

1. HTCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1, and therefore denies them.

2. HTCA admits that it is a corporation organized and existing under the laws of Washington. HTCA denies that it maintains its principal place of business at 13920 SE Eastgate

HTC AMERICA, INC.'S ANSWER, DEFENSES, AND
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1 Way, Suite 1400, Bellevue, WA 98005, but rather states that it maintains its principal place of
2 business at 308 Occidental Ave. S., Floor 3, Seattle, WA 98104.

3 **JURISDICTION**

4 3. HTCA admits that the Complaint purports to bring an action for infringement under
5 the patent laws of the United States, Title 35 of the United States Code, but denies that it
6 infringes any valid patent claim of the asserted patent.

7 4. HTCA admits that this Court has subject matter jurisdiction under 28 U.S.C. §§
8 1331 and 1338(a).

9 5. HTCA admits that this Court has personal jurisdiction over HTCA. HTCA denies
10 that it has committed acts of patent infringement giving rise to this action within this District, or
11 elsewhere.

12 **VENUE**

13 6. HTCA admits that venue is proper in this District under 28 U.S.C. § 1400 because
14 HTCA has a regular and established place of business in this District and is incorporated in the
15 state of Washington. HTCA denies that it has committed acts of patent infringement in this
16 District. HTCA denies that Rondevo has suffered harm in this District due to any action of
17 HTC.

18 **THE PATENT-IN-SUIT**

19 7. HTCA lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations of Paragraph 7, and therefore denies them.

21 8. HTCA admits that on the '685 patent states on its face that it has an issue date of
22 April 23, 2002. HTCA admits that the '685 patent is titled "Cluster Key Arrangement." HTCA
23 denies the remaining allegations of Paragraph 8.

24 9. HTCA denies the allegations in Paragraph 9.

25 10. HTCA lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations of Paragraph 10, and therefore denies them.

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11. HTCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, and therefore denies them.

12. HTCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12, and therefore denies them.

COUNT I: INFRINGEMENT OF THE '685 PATENT

13. HTCA incorporates its answers to Paragraphs 1 through 12 as if fully set forth in their entireties.

14. HTCA denies the allegations in Paragraph 14.

15. HTCA denies the allegations in Paragraph 15.

16. HTCA denies the allegations in Paragraph 16.

17. HTCA denies the allegations in Paragraph 17.

18. HTCA denies the allegations in Paragraph 18.

19. HTCA denies the allegations in Paragraph 19.

20. HTCA denies the allegations in Paragraph 20.

21. HTCA denies the allegations in Paragraph 21.

22. HTCA denies the allegations in Paragraph 22.

23. HTCA admits that it provides access to suppo

23. HTCA admits that it provides access to support, training, and instructions for its smartphones to its customers. HTCA denies the remaining allegations in Paragraph 23.

24. HTCA denies the allegations in Paragraph 24.

25. HTCA denies the allegations in Paragraph 25.

26. To the extent Rondevoo alleges any facts in the Complaint not addressed above, HTCA denies them.

JURY DEMAND

27. No response is required to Rondevoo's demand for a trial by jury, but HTCA hereby demands a trial by jury on all issues so triable, including without limitation, HTC's defenses.

**HTC AMERICA, INC.'S ANSWER, DEFENSES, AND
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PRAYER FOR RELIEF

HTCA denies that Rondevoo is entitled to any relief.

HTC'S DEFENSES

HTCA incorporates by reference the foregoing paragraphs in their entirety and asserts the following affirmative and other defenses. By asserting these defenses, HTCA does not admit that it bears the burden of proof on any issue and does not accept any burden it would not otherwise bear. HTCA reserves all other defenses pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, that now exist or in the future may be available based on discovery and further factual investigation in this case.

FIRST AFFIRMATIVE DEFENSE

A. HTCA does not and has not infringed (directly, indirectly, contributorily, by inducement, willfully, jointly, or otherwise) any valid and enforceable claim of the asserted patent, either literally or under the doctrine of equivalents.

SECOND AFFIRMATIVE DEFENSE

B. Each of the asserted claims of the asserted patents is invalid for failing to comply with one or more requirements of the Patent Laws of the United States, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

THIRD AFFIRMATIVE DEFENSE

C. By reason of the prior art and/or statements and representations made to and by the U.S. Patent and Trademark Office during prosecution of the application that led to the issuance of the asserted patents, during prosecution of any related applications, during any post-issuance proceedings involving the asserted patent, and during any post-issuance proceedings involving any related patent, the claims of the asserted patent are so limited by the doctrines of prosecution history estoppel and/or prosecution disclaimer that none of the claims of the asserted patent could be properly construed to cover any activity of HTC.

**HTC AMERICA, INC.'S ANSWER, DEFENSES, AND
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1 **FOURTH AFFIRMATIVE DEFENSE**

2 D. Rondevoo's claim for damages is limited by 35 U.S.C. §§ 286 and/or 287.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 E. HTCA did not have notice of the asserted patent prior to service of the Complaint.
5 For at least that reason, HTCA could not have, and did not, indirectly infringe the asserted patent
6 prior to service of the Complaint. Rondevoo is therefore also prohibited from recovering any
7 damages in this case prior to the date on which Rondevoo served the complaint on HTC.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 F. Rondevoo's claims and request relief are barred, in whole or in part, by the
10 equitable doctrines of laches, waiver, acquiescence, patent misuse, estoppel, and/or patent
11 exhaustion.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 G. Rondevoo's complaint fails to state claims upon which relief can be granted.

14 **RESERVATION OF RIGHTS**

15 HTCA reserves the right to amend this Answer and these Defenses should it learn of
16 additional information or defenses.

17 **COUNTERCLAIMS**

18 Pursuant to Rule 13 of the Federal Rules of Civil Procedure, HTCA asserts the following
19 Counterclaims for declaratory judgment against Rondevoo. HTCA expressly reserves the right to
20 allege additional claims as they become known to HTCA through the course of discovery.

21 **PARTIES**

22 1. Counterclaimant HTC America, Inc. ("HTCA") is a Washington state corporation
23 with a principal place of business at 308 Occidental Ave. S., Floor 3, Seattle, WA 98104.

24 2. Upon information and belief, Rondevoo is a California state corporation with a
25 principal place of business at 35 Hugus Alley, Suite 210, Pasadena, CA 91103.

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3. In documents filed with the state of California, Rondevoo states that it is a holding company.

4. Upon information and belief, Rondevoo makes and sells no products. Rather, Rondevoo is in the business of obtaining revenue from patent licenses or litigation settlements.

5. Rondevo filed at least ten patent litigation complaints in 2018. At least five of these cases have already been dismissed.

JURISDICTION AND VENUE

6. HTCA seeks declaratory judgment of patent non-infringement and patent invalidity of U.S. Patent No. 6,377,685 (the “685 patent” or the “asserted patent”) under the Patent Laws of the United States, 35 U.S.C. §§ 101 *et seq.*

7. This Court has jurisdiction over these Counterclaims pursuant, and without limitation, to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202, and the Patent Laws of the United States, 35 U.S.C. §§ 101 *et seq.*

8. Rondevoor has submitted to personal jurisdiction and venue in this District by filing this action. Thus, venue for Rondevoor is proper in this District. Upon information and belief, and by virtue of Rondevoor's filing of the instant action, this Court has personal jurisdiction over Rondevoor.

FACTS

9. By its Complaint, Rondevoor purports to assert a claim against HTCA for infringement of the asserted patent.

10. HTCA denies Rondevo's allegations of infringement of the asserted patent. HTCA also contends that each claim of the asserted patent is invalid.

11. An actual controversy has arisen and now exists between HTCA and Rondevoo as to the non-infringement and invalidity of the asserted patent.

COUNTERCLAIM I
(Non-Infringement of the '685 Patent)

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12. HTCA incorporates by reference each of the foregoing paragraphs of these Counterclaims as though fully set forth herein.

13. Rondevo has asserted that it is the owner of the '685 patent.

14. Rondevoo has accused HTCA of directly and indirectly infringing the '685 patent.

15. HTCA has not infringed and does not infringe, directly or indirectly, any valid claim of the '685 patent, either literally or under the doctrine of equivalents.

16. HTCA seeks and is entitled to a declaration that the products it sells or has sold do not directly or indirectly, individually or jointly, literally or under the doctrine of equivalents, infringe any valid claim of the '685 patent.

17. HTCA seeks and is entitled to a declaration that it has not induced the infringement of and has not contributed to the infringement of any valid claim of the '685 patent.

COUNTERCLAIM II
(Invalidity of the '685 Patent)

18. HTCA incorporates by reference each of the foregoing paragraphs of these Counterclaims as though fully set forth herein.

19. Rondevoo has asserted that it is the owner of the '685 patent.

20. Rondevo has accused HTCA of directly and indirectly infringing the '685 patent and by implication alleged that the claims of the '685 patent are valid.

21. The claims of the '685 patent are invalid for failing to comply with one or more requirements of the Patent Laws of the United States, including but not limited to 35 U.S.C. §§ 102, 103, and 112.

22. HTCA seeks and is entitled to a declaration that the claims of the '685 patent are invalid pursuant to one or more provisions of Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 102, 103, and 112.

**HTC AMERICA, INC.'S ANSWER, DEFENSES, AND
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PRAYER FOR RELIEF

WHEREFORE, HTCA requests the Court to enter judgment in its favor and grant the following relief:

A. Judgement that HTCA has not infringed and does not infringe any claim of the '685 patent, either directly or indirectly, individually or jointly, literally or under the doctrine of equivalents;

B. Judgement declaring that the claims of the '685 patent are invalid;

C. Judgement that HTCA is not liable for the relief sought in the Complaint with respect to Rondevoo's patent infringement allegations, denying Rondevoo all such relief, and dismissing Rondevoo's claims with prejudice;

D. Judgment declaring this case exceptional under 35 U.S.C. § 285 and that HTCA is entitled to recover its reasonable fees, expenses, and costs in connection with this litigation; and

E. Any such other and further relief as the Court deems equitable and just.

DEMAND FOR JURY TRIAL

HTCA hereby demands a trial by jury on all issues so triable.

Dated: February 25, 2019.

PERKINS COIE LLP

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**HTC AMERICA, INC.'S ANSWER, DEFENSES, AND
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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2019, I caused copies of the foregoing document to be served via CM/ECF to the counsel of record in this matter.

/s/ Ryan J. McBrayer

Ryan J. McBrayer

**HTC AMERICA, INC.'S ANSWER, DEFENSES, AND
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